

**International Union of Operating Engineers, AFL-CIO, Local Union 675 (Multi-Craft Installation Services, Inc.) and Thomas O. Flowers. Case 12-CB-2438**

23 August 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On 23 September 1983 Administrative Law Judge David S. Davidson issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,<sup>1</sup> findings, and conclusions and to adopt the recommended Order.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Union of Operating Engineers, AFL-CIO, Local Union 675, its officers, agents, and representatives, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.<sup>2</sup>

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> We have modified the notice to conform to the judge's recommended Order.

## APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT cause, or attempt to cause, Multi-Craft Installation Services, Inc., or any other employer, to discriminate against Thomas O. Flowers or any other employee, because such employee has engaged in activities in connection with an internal union election which are protected by the National Labor Relations Act.

WE WILL NOT restrain or coerce Thomas O. Flowers or any other employee in the exercise of

his rights guaranteed by the Act by threatening him with loss of employment in retaliation for his failure to support an incumbent officer's reelection campaign or promising him employment in return for such support.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

WE WILL make Thomas O. Flowers whole for any loss of wages and benefits suffered by reason of the discrimination against him with interest thereon.

WE WILL notify Thomas O. Flowers and Multi-Craft Installation Services, Inc., in writing, that we have no objection to Flowers' employment by Multi-Craft, and WE WILL request that Multi-Craft rehire Flowers.

WE WILL expunge from our files any references to the termination of Thomas O. Flowers and notify him in writing that this has been done and that the incident involving the unlawful termination will not be used as a basis for future actions against him and WE WILL request that Multi-Craft do the same.

INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, LOCAL UNION 675

## DECISION

### STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge. The charge in this case was filed on September 9, 1982, by Thomas O. Flowers. The complaint issued on October 22, 1982, alleging that Respondent violated Section 8(b)(1)(A) and (2) of the Act by causing Multi-Craft Installation Services, Inc. to discriminate against Flowers because he failed to support Respondent's business manager Dennis Walton in an internal union election and by threatening loss of employment and promising continued employment based on employees' support of Walton in the union election.<sup>1</sup> In its answer Respondent denied committing any unfair labor practices.

The hearing in this case was held before me in Miami, Florida, on January 6, 1983. Briefs have been received from the General Counsel and Respondent.

<sup>1</sup> Initially this case was consolidated with Case 12-CA-10334 in which Multi-Craft Installation Services was the Respondent. Before the hearing opened Case 12-CA-10334 was settled, the portion of the consolidated complaint based on that charge was withdrawn, and the cases were severed.

On the entire record in this case including my observation of the witnesses and their demeanor, I make the following

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF THE EMPLOYER

Multi-Craft Installation Services, Inc. (Multi-Craft) is a Delaware corporation, with an office and place of business in Port Everglades, Florida. It furnishes labor and administrative support in connection with the business of mechanical contracting, including the mechanical erection and installation of a container crane at Port Everglades, Florida. During the 12 months preceding issuance of the complaint, Multi-Craft received materials at its Port Everglades, Florida facility valued in excess of \$50,000 directly from points outside the State of Florida. I find that Multi-Craft is an employer engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATION INVOLVED

Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Facts*

##### 1. Flowers' employment on the Multi-Craft job

Thomas Flowers has been a member of Respondent Union for a number of years. Shortly before June 1, 1982,<sup>2</sup> Flowers visited Respondent's hall and spoke to Business Manager Dennis Walton. He told Walton that he had been out of work, that he did not condone some of the activities of some of Respondent's members, and that he had supported the Union for many years. Walton asked Flowers for his support and said that he had a job available at Port Everglades working for Multi-Craft on the construction of a gantry crane. He said that he was trying to set a precedent on the job and that if Flowers were there he would be working as a "compositor" with the Ironworkers Union in the hopes of establishing a precedent for manning future jobs calling for the construction of gantries. Walton also said that he wanted Flowers' friendship and support in the field and asked Flowers to police the job and to make sure that other operating engineers on the job were supporting Walton as well. Walton told Flowers that he wanted to know if there was anyone on the job who did not support him because he did not want anyone working there who did not support him with an election for officers coming up.<sup>3</sup>

<sup>2</sup> All dates which appear herein occurred in 1982 unless otherwise indicated.

<sup>3</sup> Flowers so testified, and added that Assistant Business Manager Gagne was present during parts of the conversation. Although both Walton and Gagne were called as witnesses and contradicted Flowers in a number of other respects, neither was asked about this conversation. Indeed Walton, who testified that he normally left the day-to-day operation of the referral system to Gagne, testified that he sent Flowers to the Multi-Craft job but did not otherwise describe his conversation with

Walton referred Flowers to the job and he started to work on June 1.

##### 2. Flowers' arrangement for a replacement on the job

On the night of July 4, Flowers' younger brother was killed in an automobile accident. Flowers was due to report back to work on July 6. He attempted to contact the union hall on Monday, July 5, in order to obtain a replacement but the office was closed, and on July 6 he reported back to the jobsite, more than 200 miles from his home. On that day he asked his supervisor, Reggie Caouette, who was field coordinator for Multi-Craft, if he could take the following Friday off in order to attend his brother's funeral. Caouette said there would be no problem. Flowers asked whether Caouette wanted him to arrange for another operator to replace him for the day, and Caouette replied that he would rather pay Flowers for the day than go through all the paperwork required for a 1-day replacement. Caouette said that Flowers could take Friday off as long as he returned the next day.

On the next day, Flowers spoke by telephone with Respondent's business agent, Randy Coston, who serviced the Port Everglades jobsite. Flowers told Coston that he needed to take time off to attend the funeral, and Coston told him that he should call the union hall to arrange for a replacement and that there should be no problem.<sup>4</sup> That afternoon Flowers spoke by telephone to Dennis Walton's secretary, Shiela Brown. He left a message for Walton that his brother had been killed, that he was in bad financial trouble, that he had the funeral to pay for, that he had not had work for very long, that he had always contributed to any collection of funds for any operator with a financial problem, and that he would like to have a little help himself if he could get it. Brown told him that she would talk to Walton when he came in and would relay the message to him.<sup>5</sup>

On Thursday, July 8, Flowers again spoke to Caouette about taking the following day off for his brother's funeral. Caouette again said that he would prefer that Flowers merely take the day off without obtaining a replacement. With Shop Steward Lee Brown<sup>6</sup> present, at around 2 p.m., Flowers telephoned Coston and told him of Caouette's proposal. Coston said that he would prefer to have a man sent from the local hall to cover the job, and Flowers obtained Caouette's approval to obtain a replacement for the day. Flowers then gave Coston the in-

Flowers at the time of his referral. Respondent contends that Flowers' testimony as to this conversation should be discredited as improbable because he was the first operating engineer employed by Multi-Craft on the jobsite. There were, however, operating engineers employed by other contractors at the jobsite when Flowers was sent there, and two additional operating engineers were added by Multi-Craft before Flowers left the job. In these circumstances and in the absence of contradiction I have credited Flowers.

<sup>4</sup> Flowers and Coston both testified to this conversation. There are minor variations in their testimony which are not material.

<sup>5</sup> Flowers testified to this conversation without contradiction. Walton denied any knowledge of the information conveyed by Flowers to Brown until Monday, July 12.

<sup>6</sup> Brown worked for another contractor at the jobsite but had been designated to serve as shop steward for Multi-Craft as well as his own employer.

formation about the replacement, and Coston transferred the call to Candida Cacciatore, the secretary who normally took requests for job referrals.<sup>7</sup>

Flowers told Cacciatore that he wanted to place a job order, and she proceeded to fill out a job-referral form, asking him questions as she filled in each blank. She asked who the contractor was, where the jobsite was, what type of equipment would be run, who the operator was, and who was placing the order. In response to the last question, Flowers told her his name and said that he was replacing himself on the job. Flowers did not tell her the reason for the replacement or that it was for a single day.<sup>8</sup>

### 3. Coston's resignation as business agent

On the same day that Flowers called to arrange for his replacement, Respondent had scheduled an evening membership meeting for the purpose of receiving nominations for the election of officers and trustees. Earlier that morning at about 10:30, Coston had met with Walton and Assistant Business Manager Gagne. At that time, Gagne asserted that Coston had never supported Walton and was not going to support him in this election. Coston replied that he supported Walton but, if Gus Chandler ran for business manager, he would support Gus Chandler. According to Coston, Walton and Gagne did not know at the time whether Chandler would run for the office of business manager and expressed doubt that he would.

After lunch Business Agent Bob Peters was called into Walton's office, and half an hour later he emerged telling Coston and Business Agent Jimmy Hester that Walton had fired him. Shortly after that, Hester was called in Walton's office, and when Hester came out he told Coston that he had told Walton he would turn in his credit cards and keys and would leave. Coston was called into Walton's office and was questioned again about supporting Walton or Chandler in the election. He again replied that if Chandler did not run, he would sup-

port Walton but if Chandler ran, he would support Chandler. By then Coston knew that Chandler was going to run for business manager. Sometime around 3 or 3:30 p.m., Coston decided that he would be next to be fired and decided to quit to avoid further conversation about it. He gave his credit cards and keys to secretary Jane Harms and left saying nothing further to Walton or Gagne. He did not brief anyone on the problems he was currently handling and said nothing to anyone about Flowers' replacement.

### 4. The referral of Flowers' replacement

After taking the job order from Flowers, Cacciatore tried unsuccessfully to give it to Coston or another business agent to fill, but none was there. Later in the afternoon she brought it to Gagne. Gagne asked her why she took a job order from an operator and told her it was not the correct procedure. She replied that she did not know that she could not take an order from an operator who was replacing himself on a job. After he received the job order, Gagne asked Walton if Walton knew anything about it as Coston had already left. Walton did not, and they tried to call the contractor at the number which appeared on the job order but they were unable to reach anyone.<sup>9</sup> At that point Gagne arranged for another operating engineer to report to the Multi-Craft job the next morning.

### 5. Respondent's nominations meeting

Respondent's nomination meeting was held that evening and was attended by 500 or more members. Flowers took an active role in the meeting, successfully moving to dispense with all business other than nominations and nominating three candidates for the positions of recording secretary, trustee, and guard. The last office for which nominations were taken at the meeting was business manager. Respondent's vice president Fritz Roberts, who chaired the meeting, nominated Gus Chandler for business manager, another member nominated Walton, and nominations were closed. Roberts then solicited and obtained a motion to adjourn. He then, however, recognized a member who moved that the election be held by mail ballot instead of by voting machine. Roberts accepted the motion and called for a voice vote. After ruling that the motion was defeated, he adjourned the meeting. At that point a number of people were calling for a division of the house and, when Roberts adjourned the meeting, there was considerable uproar. Chandler's supporters rose and started to leave, while Walton's supporters called for the meeting to continue in order to divide the house on the mail-ballot issue. Walton came to the microphone in an attempt to reconvene the meeting, but Roberts turned it off. There was a

<sup>7</sup> Flowers and Coston testified to their conversation and were in essential agreement. Brown and Caouette were not called as witnesses. While both Coston and Flowers testified that Coston referred Flowers to Cacciatore, Cacciatore testified that Flowers' call came directly to her. While I generally credit Cacciatore's version of her conversation with Flowers, in this respect the version of Flowers and Coston is more likely, and the origin of the call is a detail Cacciatore could easily have forgotten.

<sup>8</sup> Cacciatore so testified. Flowers testified that in addition to the above he told Cacciatore that the replacement would be for only 1 day and was needed because of his brother's funeral. According to him, during the conversation he gave the phone to Caouette who verbally authorized the replacement, and Caouette returned the phone to him to complete the details. I credit Cacciatore whose testimony is corroborated by the job referral slip which shows only the information which she testified that Flowers gave her. It is highly probable, as she testified, that if Caouette had spoken to her or if Flowers had given her the additional information, she would have noted the additional information on the referral slip. While at first blush, it seems likely that Flowers would have mentioned the duration if not the reason for the replacement, his failure to do so becomes more likely when placed in the context of his prior conversation with Coston. In the light of that conversation it becomes improbable that Flowers on his own initiative would have put Caouette on the phone to authorize what Coston had already approved. Flowers' further testimony that he called Coston about an hour later to tell him that the starting time had changed and that Coston again referred him to Cacciatore to take the information, was denied by Coston as well as Cacciatore, who was again corroborated by the job referral slip.

<sup>9</sup> Flowers' testimony that he had observed that the trailer where the telephone was located was usually manned at the time of the call is not sufficiently probative to warrant discrediting Walton or Gagne as to their efforts to reach Multi-Craft.

great deal of shouting, and Roberts and Walton had several verbal exchanges as Roberts left.<sup>10</sup>

Flowers, who had been sitting next to Chandler with a group of Chandler's supporters, left the hall with Chandler. According to Flowers, as they passed the podium within a few feet of where Walton was standing, Walton looked down at him and shouted that there were going to be a lot of jobs available tomorrow and asked, "Where are you you son-of-a-bitches going to be working tomorrow?" After Roberts left the podium and Chandler's supporters left the hall, Gagne took the chair, continued the meeting, and called for a division of the house on the mail-ballot motion among the several hundred members who remained.

#### 6. The termination of Roberts and others from union positions

With the exception of the business manager, Respondent's elected officers are not paid for service in office. However, the Union has several paid-staff positions, and the business manager has the power to appoint and remove those holding these positions. Roberts had held paid positions as apprenticeship coordinator, trustee of the union's pension fund, and owner's agent on a pension fund construction project. On the day after the nomination meeting, Walton told Roberts that he was being terminated from these positions because he was not supporting Walton and had "wronged him." Others who held paid positions and did not support Walton were also terminated, concededly for political reasons.

#### 7. Flowers' termination

Flowers had been scheduled to work next on Saturday, July 10, the day after his brother's funeral. On July 9, Caouette telephoned him at home and told him that he was calling to save Flowers the long trip to the jobsite to learn that he had been terminated. According to Flowers, Caouette told him that Walton had told Caouette to terminate Flowers and to instruct him to go to the union hall if he wanted to discuss the matter. According to Flowers, Caouette also said that Walton had mentioned that Flowers did not support Walton, Caouette said that he hated to terminate Flowers, that he was a good worker, but that Walton told him there would be problems on the job if he did not.

Caouette was not called as a witness by either side, but Walton and Gagne testified that, after unsuccessfully attempting to reach Caouette on the afternoon of July 8, they spoke to him by telephone on July 9 utilizing a speaker phone with both participating in the conversation. Their versions of that conversation are described and discussed below.

On the following Monday, July 12, Flowers went to the jobsite to pick up his check and again spoke with Caouette. According to Flowers, Caouette said that Walton had told him that if Flowers did not support Walton, Flowers was not going to work there again.

After picking up his check Flowers went to the union hall and spoke to Walton. Flowers testified that he asked Walton why he was terminated from his job and said that he did not think he should have been terminated for taking time off to attend his brother's funeral. He testified that Walton replied that he was not terminated for that reason, said that he knew nothing about his brother's death, and continued, "I sent you out on that job to support me and to police that job, and to make sure that the people on that job were supporting me . . . I asked you for your friendship and your support, and you told me that you would support me. That's why I sent you out there to work. . . . you no good son-of-a-bitch. You don't support me, you'll not work out of this hall." According to Flowers, after further loud exchanges, referring to his request for a collection for his brother's funeral, he told Walton that he had helped Walton's brother when his brother was in a bind, that now he was in a bind, that he had asked for Walton's help, that he had gotten nothing, and that he therefore supported his opposition. According to him, he asked for his job back, and Walton said that he would never work out of the local if he did not support Walton. He testified that, after further exchanges, Walton suggested that they calm down and talk and then said "Hey you've always been stand up union man. . . . You've been respected in the field, and I need guys like you in my corner . . . I need your support. I need you to go out into the field. I need you to talk to these men, and I need you to put up stickers. I need you to support me in the field . . . I need you to represent me out there. When you came in here and asked me for a job, I gave you the job because you said you supported me . . . If you don't support me, I'll see to it that you never work out of this local again. In fact, I can see to it that you are physically unable to work out of this local . . . If you support me go out in the field and let the people get the word back that you are supporting me, and I'll see to it that you have a nice cushy, easy job when this is over with." He testified that Walton gave him a handful of pro-Walton bumper stickers, and he left without further argument or protest, but he did not indicate that he was satisfied or that he would support Walton. He testified that Walton said that he would put Flowers' name on the out-of-work list.

Walton in his testimony agreed that when Flowers came to his office, Flowers was upset about being replaced and asked for the reason. Walton testified that he explained that they had replaced Flowers pursuant to the job order and that he refused a request by Flowers to be sent back to the job. According to Walton, Flowers indicated that he was upset with a statement by Coston that Walton would not give him any money for transportation for his brother's funeral, and Walton replied that he was unaware of Flowers' brother's funeral or his request to Coston, but that union policy and the labor laws prevented the Union from paying anyone treasury money because one of his relatives passed away. Walton denied that at any time during the meeting he threatened the loss of Flowers' job for not supporting him or that he offered to put Flowers' name on the out-of-work list, although he testified that he suggested that Flowers do so.

<sup>10</sup> These findings are based on the testimony of Roberts and Gagne who were in basic agreement as to these events. While less complete or differing in some details, the testimony of Coston, Cacciatore, and Walton is consistent with their testimony.

According to Walton, Flowers never mentioned that he had talked to Coston and requested the day off before obtaining a replacement. Walton denied telling Flowers that if he would support him in the upcoming election he would have a good job and made no promise about future employment. According to Walton, when Flowers left his office it seemed to him that the problem had been resolved, they shook hands, and Flowers told him that he supported him 100 percent and asked for some campaign bumper stickers which Walton gave to Flowers. He next realized that something was still going on when Flowers wrote to the International and filed charges with the Board.

Gagne testified in support of Walton's version that he saw Flowers that morning as Flowers was leaving carrying Walton bumper stickers and that Flowers simply shook hands with him and said that he had been lied to by some "sob's," that he had gotten it straightened out, and that he was supporting Walton.

#### 8. Walton's election day statement to Flowers

On August 14, the day of the election for union officers, Flowers drove past Walton who was standing outside the voting place. As Flowers passed Walton he came to almost a complete stop before making a turn. Walton spoke to him, saying, "You son-of-a-bitch. You better burn your books, because you'll never work from this goddam moment again."<sup>11</sup>

Walton received a letter from International Union President J.C. Turner dated July 23 which enclosed Flowers' July 15 letter and asked Walton to investigate the matter. Walton replied on September 30.

### B. Concluding Findings

#### 1. The alleged July 8 threat

I cannot credit Flowers that, as he was leaving the nomination meeting, Walton shouted that there were going to be a lot of jobs available the next day and asked where those who were leaving were going to be working the next day. Despite the fact that Flowers left with a group of others, no other witness who was called corroborated Flowers, and Walton denied making the statement. Flowers' testimony was also at variance with other witnesses as to how the meeting ended and as to what precipitated the disorder at the end of the meeting. I credit Walton's denial that he threatened anyone with a loss of jobs at this time and find that Respondent did not violate the Act at this time as alleged in the complaint.

#### 2. The termination of Flowers

The General Counsel contends that discrimination against Flowers is shown by evidence of Walton's animus against those who did not support him, by the timing of Flowers' discharge, by Walton's statements to Flowers, and by the pretextual nature of the reasons given by Walton for not sending Flowers back to his job.

Some of the evidence cited by the General Counsel I find cannot be relied on to show Walton's animus. Thus, I have not credited Flowers' testimony as to Walton's threat at the nomination meeting. While Walton concededly threatened to terminate paid staff of Respondent and did not terminate Roberts and others when their support for Chandler was revealed, there is no allegation that those discharges were unlawful.<sup>12</sup> The statements attributed to Caouette by Flowers in their telephone conversation on July 8 and in their face-to-face conversation on July 12 is hearsay as to Walton and Respondent; it is neither evidence of an admission attributable to Respondent nor of Respondent's animus.

Apart from the disputed evidence as to the July 12 conversation between Flowers and Walton, considered below, there is undisputed testimony that Walton on two occasions made threats to remove members from jobs or to keep them from getting jobs with employers other than Respondent. Thus, when Walton first referred Flowers to Multi-Craft, he asked Flowers to support him and to make sure that others on the jobsite were supporting him as well, telling him that he did not want anyone on the jobsite who did not support him with the union election coming up. After Flowers was terminated on the day of the election, Walton told Flowers that he had better burn his book because he would never work again. While these statements are not alleged in the complaint as independent violations of the Act, they establish that Walton threatened retaliation against members in their outside employment as well as retaliation against those holding paid staff positions and erode his testimony that based on advice of counsel he distinguished between lawful political reprisals and unlawful interference with members' outside employment.

The General Counsel would attach significance to the fact that Flowers was told he had been permanently replaced the day after the nomination meeting in which he took an active role. Respondent would discount the significance of Flowers' role in the nominations process, relying on Walton's testimony that Flowers made no nominations at the meeting which would lead him to believe that Flowers opposed him, that there were 30 to 40 nominations made, paid no particular attention to Flowers' nominations as opposed to others. However, Walton did not directly deny awareness of Flowers' role in the meeting, and his testimony is not convincing as a denial of awareness of Flowers' support of the rival candidate. Walton was aware that Chandler's supporters were sitting in a group, and it is undenied that Flowers was with them. Two opposing slates were formed, and the persons that Flowers nominated were on the slate opposed to Walton. Walton was not inexperienced in internal union politics, and both before and after the meeting clearly conveyed to Flowers and union staff the importance of his having their support. I find it highly unlikely that Walton, Gagne, and Walton's supporters did not pay close attention to the identity of those who made nominations, particularly if, as Walton testified, he knew before the meeting that Chandler would be nominated to

<sup>11</sup> Flowers' testimony in this respect was uncontradicted.

<sup>12</sup> See *Finnegan v. Leu*, 456 U.S. 431.

oppose him. I find the inference warranted that Walton became aware on the night of the nomination meeting that Flowers was supporting Walton's opposition and therefore that the timing of the notification to Flowers that he was permanently replaced in relation to his role at the meeting the previous night is significant.

The testimony concerning the considerations which led to Flowers' permanent replacement and the conversation between Walton and Caouette present more substantial problems. First, it is the General Counsel's premise that both as a result of what Coston knew and what Flowers told Cacciatore, Respondent was aware at the time the replacement for Flowers was sent to the jobsite that Flowers intended to return on the following workday. However, Coston conceded that he left the union hall and his job shortly after his conversation with Flowers and did not communicate what Flowers had told him to any one else. While Coston was an agent of Respondent at the time Flowers spoke to him, he was clearly not a witness who was friendly to Walton and the incumbent union leadership at the time he testified. There is no reason to discredit his testimony in this regard. In the light of his voluntary separation almost immediately after he spoke to Flowers, I find that what Flowers told Coston is not attributable to Walton or to Respondent generally. Furthermore, I have found above that Cacciatore's testimony, supported by the job referral slip, is to be credited that Flowers did not tell her that he wanted to be replaced for 1 day only.

Thus, I find that at the time Walton placed the call to Caouette, he did not know that Flowers wanted a replacement for himself to attend his brother's funeral, that he sought a replacement only for a single day, or that Coston had approved his replacement. These findings support Walton's testimony that he placed the call to Caouette to find out why Flowers had left the job.

Walton's testimony as to his conversation with Caouette is otherwise less convincing. Despite his reason for calling Caouette, by his own version he did not ask why Flowers left the job, and Caouette did not tell him. Rather, according to Walton, Caouette asked if Flowers' replacement would be permanent and said that he did not want Flowers back on the job because he received travel pay and did not cooperate with others on the job. Yet in an affidavit given during the investigation of this case on October 2, 1982, with his attorney present, Walton stated that he was unaware of the subsistence issue, that he received no complaints from the contractor about Flowers, and that he could not recall speaking to Caouette on the day Flowers was let go. Walton's explanation for the inconsistencies between his testimony and his affidavit was that Gagne was on vacation when he gave his affidavit and that he gave the affidavit before speaking with either Gagne or Caouette to refresh his recollection.<sup>13</sup> He testified that his recollection was re-

freshed when he later spoke with them. This explanation is not convincing in the light of the facts that Flowers' charge was filed on September 9 and that even earlier Flowers had complained to the president of Respondent's parent union, who, by letter dated July 23 had asked Walton to conduct an internal investigation of Flowers' complaint.

In addition to the conflict between Walton's testimony and his affidavit, his testimony also is in partial conflict with Gagne's, who testified that Caouette asked only if the replacement was going to be permanent and said nothing about whether Flowers was going to be rehired or his desire to have Flowers back on the job. Moreover, while Gagne testified that Caouette had complained to him that Flowers had difficulty getting along with the Ironworkers foreman, when he was asked if he had asked Flowers for his side of the story, Gagne testified that that was what the business agent was for and that he assumed Coston had contacted Flowers, implying that either he or Caouette had spoken to Coston. Yet Coston, who was the business agent responsible for servicing the Multi-Craft jobsite, testified that he received no complaints about Flowers, although there were jurisdictional disputes on the job with both unions claiming certain work. Although Coston was clearly part of the faction hostile to Walton, he did not tailor his testimony with respect to the nomination meeting or Flowers' alleged second telephone call to conform to Flowers' version, and he impressed me as essentially truthful.

In the light of the enumerated weaknesses in the testimony of both Walton and Gagne, my overall impression that Walton's testimony was colored by a strong desire to prevail in this case, and Gagne's dependence upon Walton's goodwill to retain his appointed position, I am unable to credit their testimony as to their telephone conversation with Caouette on July 9. I find that a conversation between Walton and Caouette occurred, but do not find that its content was as testified to by Walton and Gagne.

More difficult to resolve is the conflict between Walton and Flowers as to the July 12 conversation in Walton's office. As set forth above, I have discredited each of them as to significant portions of their testimony: Flowers as to his conversation and Cacciatore and the nomination meeting, and Walton as to the conversation with Caouette. Like Walton, Flowers had a clear interest in the outcome of the proceeding.

Nonetheless, Walton's version is the less probable of the two. Thus, although he agreed that Flowers started the conversation by asking the reason why he was replaced, Walton testified that he replied that Flowers was replaced pursuant to the job order and refused Flowers' request to be sent back to the job, telling him that the Company was unhappy with his performance and that he had improperly left the job without notifying his business agent. According to Walton, Flowers did not mention that he had spoken with Coston before leaving the job, but responded that he was upset because the Union had not taken up a collection for his brother's funeral. According to Walton, after he told Flowers that he knew nothing about his brother's death and explained the

<sup>13</sup> Walton also testified that the statement was drafted by the Board agent. However, both he and his attorney read it before he signed it. The fact that the Board agent drafted it cannot explain inconsistencies like these.

reason why no collection could be taken, Flowers was satisfied and left indicating that he would support Walton. According to Flowers, Walton told him he was not terminated for taking time off to attend his brother's funeral but was terminated for not supporting him. It is likely that Flowers would have failed to mention his conversation with Coston about leaving the job if Walton attributed his removal from the job to nonsupport for him in the election, as Flowers testified. It is not likely that Flowers would have failed to mention his conversation with Coston if Walton attributed his termination to his leaving the job without notice to the Union. Similarly, it is likely that Flowers would have raised the matter of the collection for his brother's funeral, and attributed to it his support for Walton's opposition if Walton had attributed Flowers' termination to his support for the opposition. It is not likely that Flowers would have accepted without protest Walton's explanation that he was removed for cause unrelated to union politics, and then would have volunteered his dissatisfaction with Walton over the collection as the reason for his nonsupport. Finally, in the light of Flowers' letter of protest written to the president of Respondent's parent international union only a few days after July 12, Flowers' explanation that he merely gave up arguing with Walton, accepted the proffered campaign materials, and left Walton's office is more plausible than Walton's testimony that Flowers seemed to be satisfied with Walton's explanation and told him that he would support him in the upcoming election. In sum, I credit Flowers rather than Walton as to their July 12 conversation and find that, when Flowers protested his removal from the job, Walton, while denying awareness of his brother's funeral, told Flowers he would not work out of the union hall if he did not support Walton and reminded Flowers of what he had told him when he sent him to the job.

In the light of these findings, I conclude that Respondent caused Flowers to be permanently replaced on the Port Everglades job because of Flowers' active role in nominating members of the slate running in opposition to Walton the night before Flowers' brother's funeral. While it is not known what was said between Caouette and Walton, it was on July 9 that Flowers learned that he was not to return to the job. Walton's denials that he was unaware of Flowers' support of the opposition slate is not persuasive. Walton was an experienced union officer who had been through other contests and was clearly politically sophisticated. It is highly unlikely that he and his supporters did not know precisely who the opposition was and who those who nominated them were, particularly after Roberts had indicated earlier in the day that Chandler might run, and the business agents were terminated or quit after being questioned about their support by Walton. That Walton entertained animus against Flowers for his nonsupport is shown clearly by his statements to Flowers at the time of his hire, at the time of their July 12 conversation, and on the day of the election. Moreover, that Walton caused his removal from the job because of his nonsupport was virtually stated by Walton to Flowers on July 12. I reject Respondent's defense that Flowers was removed because he left without authorization, because Multi-Craft wanted a local man.

As for the first reason, had Walton inquired of Flowers or had he told Flowers that reason, he would have undoubtedly have learned that Coston had been notified and approved Flowers' day off. As for the remaining reasons, I do not credit them for the same reasons that I have discredited Walton and Gagne as to their July 9 conversation with Caouette. Accordingly, I conclude that by causing Flowers to be permanently replaced by Multi-Craft, Respondent violated Section 8(b)(2) and (1)(A) of the Act.<sup>14</sup>

Based on my findings above, I find further that on July 12 Respondent further violated Section 8(b)(1)(A) of the Act by Walton's threat that Flowers would not work out of the hall again if he failed to support Walton and his promise of employment to Flowers if he gave Walton support.<sup>15</sup>

#### IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action to effectuate the policies of the Act.

Having found that Respondent unlawfully caused Thomas O. Flowers to be denied employment by Multi-Craft Installation Services, Inc. since July 9, 1982, I shall recommend that Respondent make him whole for any loss of earnings suffered as a result of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of the discrimination against him until he is reinstated to his former or a substantially equivalent job, obtains similar employment elsewhere, or until such time as his job with Multi-Craft Installation Services, Inc. normally would have ended, whichever first occurs, less net earnings during such period, to be computed on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed by the Board in *Florida Steel Corp.*, 231 NLRB 651 (1977).

On the basis of the above findings of fact and the entire record in this case, I make the following

#### CONCLUSIONS OF LAW

1. International Union of Operating Engineers, AFL-CIO, Local Union 675 is a labor organization within the meaning of Section 2(5) of the Act.

2. Multi-Craft Installation Services, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By causing Multi-Craft Installation Services, Inc. to terminate Thomas O. Flowers on July 9, 1983, in retaliation for Flowers support of candidates opposing Respondent's incumbent business manager in an internal union election, Respondent caused Multi-Craft Installation Services, Inc. to discriminate against Flowers in violation of Section 8(a)(3) of the Act, and Respondent en-

<sup>14</sup> *Carpenters Local 808 (Building Contractors Assn.)*, 238 NLRB 735, 741 (1978).

<sup>15</sup> *Carpenters Local 1281 (Raber-Kief)*, 152 NLRB 629, 635 (1965).

gaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. By threatening Thomas O. Flowers with loss of future referrals if he failed to support Respondent's business manager in an internal union election and promising him employment in return for such support, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>16</sup>

#### ORDER

##### 1. Cease and desist from

(a) Causing, or attempting to cause, Multi-Craft Installation Services, Inc., or any other employer, to terminate or otherwise discriminate against Thomas O. Flowers or any other employee, in violation of Section 8(a)(3) of the Act because such employee has engaged in activities in connection with an internal union election protected by Section 7 of the Act.

(b) Restraining or coercing Thomas O. Flowers or any other employee in the exercise of rights guaranteed by Section 7 of the Act by threatening him with loss of employment in retaliation for his failure to support an incumbent officer's reelection campaign and promising employment in return for such support.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the purpose of the Act.

(a) Make Thomas O. Flowers whole for any loss of wages and benefits suffered by reason of the discrimination against him in the manner set forth in The Remedy section of this decision.

(b) Notify Thomas O. Flowers and Multi-Craft Installation Services, Inc., in writing, that it has no objection to Flowers' employment by Multi-Craft, and request that Multi-Craft rehire Flowers.

(c) Expunge from its files any references to the termination of Thomas O. Flowers, and notify him in writing that this has been done and that the incident involving the unlawful termination will not be used as a basis for future actions against him.

(d) Post at its office and other places where it customarily posts notices to members copies of the attached notice marked "Appendix."<sup>17</sup> Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Forward signed copies of said notice to the Regional Director for Region 12, for posting by Multi-Craft Installation Services, Inc. if willing, at all locations where notices to employees are customarily posted.

(f) Request Multi-Craft Installation Services, Inc. to expunge from its files any references to the termination and to notify Thomas O. Flowers in writing that this has been done and that evidence of the unlawful termination will not be used as a basis for future personnel actions against him, if it is willing.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

<sup>16</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>17</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."